

TRAVEL PROMOTION CONSUMER PROTECTION ACT

House Bills 5520 and 5521
Sponsor: Rep. Derrick Hale
Committee: Consumer Protection

Complete to 2-20-98

A SUMMARY OF HOUSE BILLS 5520 AND 5521 AS INTRODUCED 1-29-98

The bills would create the Travel Promotion Consumer Protection Act to require a travel promoter to refund customers money under certain circumstances, inform customers of their rights regarding refunds, maintain either an escrow account or insurance to cover refund payments, and provide for violations to be treated as unfair, unconscionable, or deceptive under the Consumer Protection Act.

House Bill 5520 would regulate the actions of travel promoters: businesses that were primarily engaged in the sale of transportation (the conveyance of individuals by air, sea, rail, motor vehicle, or by any other means on a foreign or domestic carrier) or transportation related services (car rentals, transfers, sightseeing tours, meals, lodging and all other services reasonably related to transportation), and solicited the purchase of, issued or delivered a ticket representing the sale of, or collected a payment, charge, deposit, or any other valuable consideration for the sale of transportation or transportation related services. However, the following entities would not be considered travel promoters for the purposes of the act: a transportation provider and its employees, providers of transportation related services and its employees, and religious, charitable, educational, or fraternal organizations that are exempt from taxation under 501(c)(3) or (8) of the Internal Revenue Code provided that they are working on behalf of their members.

Restrictions. A travel promoter would be prohibited from advertising the availability of transportation or transportation related services, unless the promoter had contracted for the transportation or services before placing the advertisement.

Before a travel promoter could receive any payment from a customer, the promoter would be required to provide the customer with a written statement that clearly and conspicuously set forth at least all of the following:

- * The travel promoter's name, business address, and telephone number.
- * The amount to be paid, the date that the deposit or payment amount is due, the purpose of the payment, and an itemized statement of the balance due.
- * The location and account number of the escrow account, if an escrow account is required.

* A copy of the certificate or certificates evidencing insurance coverage, if an escrow account is not required.

* The name of the transportation providers with which the promoter has contracted, the type of transportation, and the date, time, and place of each departure on the itinerary.

* The names of the providers of transportation services being purchased and a description of those services.

* All of the conditions under which the contract between the customer and the promoter could be canceled.

* All of the conditions under which the contract between the promoter and the transportation and transportation services providers could be canceled.

* A statement in 8-point boldfaced type stating that, upon the cancellation of either the transportation or related services through no action of the consumer, any consideration paid to the promoter for transportation or services not provided to the customer would have to be refunded within 5 business days from the date of the cancellation.

In addition, the contract between the promoter and customer could not contain any provisions that conflicted with or would void any of these requirements or those concerning the requirement that the promoter maintain either an escrow account or insurance.

Escrow. A travel promoter would be required to maintain an escrow account, unless the promoter had insurance coverage of not less than \$1,000,000 for both professional errors and omissions and coverage of no less than \$100,000 for insolvency or business failure. The insurance policies would have to be written by an insurance company that was recognized and approved to do business in this state by the commissioner of insurance. A travel promoter that was required to maintain an escrow account would be required to deposit 90 percent of all money received from a customer for payment into the account which would have to be maintained in a federally insured lending institution. The promoter could not encumber the account in any way and could only remove money for partial or full payment of transportation or related services for a customer, or for a refund for a customer. In addition, interest earned on the escrow account could be removed on a monthly basis.

Refunds. If a contract were canceled through no fault of the customer, the travel promoter would be required to refund any payment made by the customer for transportation or related services that were canceled and had not been provided. The refund would have to be provided to the customer no less than five days from the date of the cancellation. In addition, if the promoter had willfully misrepresented the time, date, or place of any departure or arrival, or the type of transportation or related service to be provided under the contract, or was unable to deliver the tickets as required, a customer could request cancellation of a contract and the promoter would be required to cancel the contract and refund the customer's payment not less than five days after the request was made.

A customer's right to a refund under either of these circumstances could be waived by the customer, but the waiver would have to be in writing on a separate document from the statement that the bill requires the travel promoter to provide to the customer and would have to be executed no less than five days after either the date the contract was canceled or the date the customer requested that the contract be canceled.

Delivery. Delivery of the ticket or tickets allowing the customer to complete his or her travel would have to be made by physically handing over the ticket to the customer or the customer's agent, or handing the ticket over to a third party transit service for delivery to the customer's address, or by mailing the ticket through the United States Postal Service to the customer's address.

If a customer paid cash or another means that provided immediate satisfaction of the debt, in full, the travel promoter would be required to issue and deliver the ticket or tickets purchased to the customer within two business days of the payment. If the payment in full were made by check or credit card or another means that would allow for a delay of more than eight hours between the tender of the payment and the crediting of the travel promoter's account, the ticket or tickets would have to be issued and delivered within two business days of the earlier of either the time the payment was credited to the travel promoter's account or the expiration of the maximum settlement period authorized under section 4123 of the Uniform Commercial Code.

House Bill 5521 would amend the Consumer Protection Act (MCL 445.903) to require that violations of the provisions of House Bill 5520 be treated as unfair, unconscionable, or deceptive methods, acts or practices in the conduct of trade or commerce.

Analyst: W. Flory

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.